

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

KELLY A FERKEL
Claimant

APPEAL NO. 07A-UI-11281-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 11/04/07 R: 04
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative's dated November 29, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on December 20, 2007. Ms. Ferkel participated personally. The employer participated by Jeff Scher, representative, and witnesses Joshua Maxfield and Marnie McDaniel. Exhibit Number One was received into evidence.

ISSUE:

At issue in this matter is whether Ms. Ferkel was discharged for intentional disqualifying misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from April 3, 2006, until November 9, 2007, when she was discharged from employment. Ms. Ferkel was a full-time personal banker under the supervision of Marnie McDaniel.

The claimant was discharged based upon the employer's belief that the claimant had issued debit cards to company customers without specific authorization to do so. The bank had received a complaint from a bank customer regarding the issuance of a debit card that the customer believed had not been authorized. Under company policy, personal bankers are required to make certain sales levels each day and are authorized to issue debit cards to all signers on a business account, provided the business owner (or other designated individual) authorizes it.

Based upon the complaint, the company investigated but was unable to reach a number of contacts to verify whether Ms. Ferkel had adequately received authorization to issue the debit cards. Based upon the available responses, the employer concluded that the appropriate level of authorization had not been received. While investigating the matter, management agreed

that the claimant's explanation was a possibility and indicated to Ms. Ferkel that they were attempting to save her employment. Ultimately, a decision was made to terminate the claimant.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge in this case is whether the evidence establishes that the claimant was discharged for intentional disqualifying misconduct in connection with her work. It does not.

In this case, the employer relies primarily on hearsay statements made by individuals who were not available to be cross-examined at the time of hearing. In contrast, the claimant has provided sworn firsthand testimony, specifically testifying that she had received authorization from business account owners to issue debit cards to other signers on the business checking accounts. The evidence in the record establishes that this method of securing authorization is acceptable and that, prior to the discharge, management individuals believed that the claimant's explanation was a possibility and that management individuals were attempting to retain the claimant as an employee for these reasons. Employees in the claimant's job position are required to make business sales each day to ensure their continuing employment.

The question before the administrative law judge in this case is not whether the employer has a right to discharge an employee for these reasons, but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate Ms. Ferkel may have been a sound decision from a management viewpoint, for the above stated reasons the administrative law judge concludes that the claimant did not intentionally violate company policy but believed that she was making sales within the guidelines provided.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency,

unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

For the reasons stated herein, the administrative law judge concludes that the claimant's discharge was non-disqualifying. Benefits are allowed.

DECISION:

The representative's decision dated November 29, 2007, reference 01, is hereby affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw